

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOSHUA AND TIFFANY MUNROE,)
Plaintiffs,)
vs.) Cause No. 4:10-cv-1942
CONTINENTAL WESTERN GROUP, a)
Foreign Limited Liability Company, and)
ROLLET BROS. TRUCKING COMPANY,)
INC., a Missouri Corporation,)
Defendants.)

NOTICE OF REMOVAL

COMES NOW Defendant Continental Western Insurance Company (improperly named Continental Western Group), by and through its undersigned counsel, Hinshaw & Culbertson LLP, Terese A. Drew and Lori A. Schmidt, and pursuant to 28 U.S.C. §1446 invokes this Court's jurisdiction under the provisions of 28 U.S.C. §1332 and 28 U.S.C. §1441(b) and states the following grounds for removal:

1. On or about August 30, 2010, Plaintiffs filed their Petition in the Circuit Court of St. Louis County alleging breach of contract and vexatious refusal related to an automobile liability insurance policy. A true and correct copy of the Petition is attached hereto as Exhibit A. The cause of action described in those papers was brought in the Circuit Court of the County of St. Louis, Missouri with style and caption as *Joshua and Tiffany Munroe v. Continental Western Group and Rollet Bros. Truckin Company, Inc.* and assigned Cause No. 10SL-CC03518 (the "state court action").

2. On September 14, 2010, Defendant Continental Western Insurance Company (improperly named Continental Western Group) was served with a copy of Plaintiff's Petition.

3. 28 U.S.C. §1446(b) provides that a notice of removal may be filed within 30 days after receipt by the Defendant of the initial pleading. As such, Defendant's Notice of Removal is timely filed under 28 U.S.C. §1446(b).

4. Pursuant to 28 U.S.C. §1446(a), the state court action, which was commenced in the Circuit Court of St. Louis County, Missouri, may be removed to this Federal District Court, being a United States District Court for the Eastern District of Missouri, which embraces the County of St. Louis, Missouri within its jurisdiction.

5. At all time relevant to the Plaintiffs' Petition, Continental Western Insurance Company (improperly named Continental Western Group) was incorporated in the State of Iowa, and had its principal place of business at 11201 Douglas Avenue, Urbandale, Iowa 50322; therefore, it is a citizen of the state of Iowa.

6. At no time relevant to Plaintiffs' Petition has Continental Western Insurance Company (improperly named Continental Western Group) had a principal place of business in Missouri, nor was it incorporated in Missouri.

7. Plaintiffs are Missouri residents who reside in St. Louis County, State of Missouri.

8. In their Complaint, Plaintiffs seek damages in excess of \$500,000.00.

9. As such, there is diversity of citizenship and the case can be removed pursuant to 28 U.S.C. §1332.

10. Pursuant to 28 U.S.C. §1446(a), Defendant has attached to this Notice of Removal a copy of all process, pleadings and orders served upon them in the state court action. *See Exhibit A.*

11. Pursuant to 28 U.S.C. §1446(d), Defendant shall give written notice of this removal to all parties in the state court action and shall file a copy of this Notice of Removal with the clerk of the state court action.

12. Plaintiffs have named Rollet Bros. Trucking Company, Inc., a Missouri Corporation, as a Defendant in this case. Rollet Bros. Trucking Company, Inc. is an unnecessary party to this action and cannot defeat removal. See *Bailey v. Bayer Cropscience*, 563 F.3d 302 (8th Cir. 2009); *Strotek Corp. v. Air Transport Assoc.*, 300 F.3d 1129 (9th Cir. 2002); and *Hamilton v. Empire*, 297 F. 422 (8th Cir. 1924).

WHEREFORE, Defendant Continental Western Insurance Company (improperly named Continental Western Group) prays this Notice be granted and that said action be removed in its entirety from the Circuit Court of St. Louis County, State of Missouri to the United States District Court, Eastern District of Missouri, as provided by law.

HINSHAW & CULBERTSON LLP

By: /s/ Lori A. Schmidt
LORI A. SCHMIDT #54183
Gateway One
701 Market Street, Suite 1300
St. Louis, MO 63101-1843
P: (314) 241-2600
F: (314) 241-7428
lschmidt@hinshawlaw.com
Attorneys for Defendant
Continental Western Insurance Company
(improperly named Continental Western Group)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was electronically filed and also placed in a sealed envelope, clearly addressed, with proper postage fully prepaid, and deposited in the United States Mail at St. Louis, Missouri, on this 14th day of October, 2010, addressed to the following attorney(s) of record:

Mr. Joseph R. Dulle
**Stone, Leyton & Gershman,
a Professional Corporation**
7733 Forsyth Blvd., Suite #500
St. Louis, MO 63105
P: (314) 721-7011
F: (314) 721-8660
jdule@stoneleyton.com
Attorneys for Plaintiffs

/s/ Lori A. Schmidt